

# SPECIAL NOTICE

June 23, 2003

For further information contact:  
Telephone Information Center  
1-800-647-7706 or (360) 486-2345

Alternate Formats (360) 486-2342  
Teletype 1-800-451-7985

## Environmental Remedial Action Sunsets

Effective July 1, 2003, RCW 82.04.2635 expires and with it, the special B&O tax rate for Environmental Remedial Action (ERA). Also expiring are section (10) of RCW 82.04.050 that excluded environmental remedial action from the definition of a retail sale and section (9) of RCW 82.04.190 that identified a person performing ERA as a consumer.

Because the law will no longer provide a special definition for environmental remedial action, the activities relative to an environmental remedial clean up will be taxed in accordance with the Washington tax law applicable to the specific activity performed.

### Service Activities

The following activities that may be performed relative to the clean up of a contaminated site are service activities.

- ◆ Monitoring
- ◆ Treating groundwater
- ◆ Waste disposal
- ◆ Testing
- ◆ Surveying
- ◆ Engineering and design services
- ◆ Consulting
- ◆ Planning services
- ◆ Other activities, not elsewhere defined in Chapter 82.04 RCW.

Persons who perform the above activities are subject to B&O tax under the service and other activities B&O tax classification and will owe sales tax or use tax on all materials consumed on the job.

### Retail Activities

Improvements to real property are a retail activity if performed for a consumer and unless otherwise provided by law (for example, improvements to buildings for the federal government are not a retail activity). Retail activities include the following:

- ◆ Repairing, improving, or cleaning an existing building or structure
- ◆ Razing an existing building or structure

(more)



- ◆ Removing underground tanks
- ◆ Installing a cap over contaminated soil
- ◆ “Cleaning” contaminated soil when performed in conjunction with the razing and/or construction of a building or structure such as a dry cleaner or a gas station

Persons who make such retail sales are subject to the retailing B&O tax and must collect sales tax from the consumer. Subcontractors that receive a completed resale certificate from a contractor and are performing activities that would otherwise be subject to retailing B&O tax are subject to the wholesaling B&O tax (sales tax is not collected).

### **Hauling Activities**

Persons who merely transport contaminated materials are subject to either the motor or urban transportation classification of the public utility tax.

### **Combination Contracts — Services Rendered in Respect to Construction**

Contracts that formerly came within the definition of environmental remedial action may include a combination of service and retail activities. After June 30, 2003, such contracts will be taxed in accordance with the predominant activity of the contract. For example, if a person is responsible for razing a gas station, removing the underground tanks, and cleaning contaminated soil, all income associated with these activities will be subject to the same tax treatment as the razing and removal, that is, as a retailing activity.

### **Cleaning Bare Land or Water**

The clean up of unimproved land or water such as might occur at the site of an oil spill on an undeveloped beach receives specific tax treatment pursuant to Excise Tax Advisory 553.04.172/224. This law remains unchanged with the expiration of the environmental remedial action statutes. Gross revenue from these types of clean-ups is subject to the service B&O tax classification. The activities may include the following:

- ◆ Skimming oil off water
- ◆ Using absorbents to remove oil from land or water
- ◆ Pumping oily water from a vessel and disposing of waste water
- ◆ Cleaning contaminated fowl or mammals
- ◆ High pressure washing of land

### **Contracts in existence on July 1, 2003**

- ◆ Gross revenues received for activities performed **prior to July 1, 2003**, pursuant to a contract that met the requirements of environmental remedial action should be reported under the environmental remedial action B&O category.
- ◆ Gross revenues received for activities performed **subsequent to July 1, 2003**, pursuant to a contract that met the requirements of environmental remedial action should be reported as retailing B&O, service and other B&O tax, or hauling public utility tax as applicable as described above.

To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 486-2342. Teletype (TTY) users please call 1-800-451-7985.